

November 17, 2023

The Honorable John G. Roberts, Jr.  
Chief Justice  
Supreme Court of the United States  
1 First Street NE  
Washington, DC 20543

*Submitted via pio@supremecourt.gov*

Dear Chief Justice Roberts:

We, the undersigned, write regarding the Code of Conduct for Justices of the Supreme Court of the United States (the “Code”) published on November 13, 2023. While many of us have called on the Supreme Court to promulgate a binding ethics code, the Code falls short of what we and the public expect from the nation’s highest court. Specifically, the Code is inherently flawed because it lacks a dedicated internal ethics enforcement body to advise Justices about their ethics obligations and investigate alleged misconduct. The Code cannot provide meaningful accountability without a compliance mechanism.

We ask that you, as Chief Justice, commit to establishing an internal ethics office that provides detailed interpretations of the Code’s provisions and ensures enforcement. Only then will the Court assuage public concern with the numerous allegations of unethical conduct of Justices over recent years.

**First**, the Court must designate one office of ethics counsel to provide consistent ethics advice and guidance on the Code and other applicable ethics laws. This approach follows the ethics rules of the executive and legislative branches of government as well as the lower federal courts, which all include a designated body responsible for interpreting the rules.

The Court’s lack of specific ethics officials responsible for answering compliance questions will result in a system of infinite interpretations and, ultimately, non-compliance. For example, the Code’s commentary explains that the “The Justices may also take guidance from their colleagues, judicial decisions, the Supreme Court’s Office of Legal Counsel, the Judicial Conference Committees on Codes of Conduct and Financial Disclosure, lower court judges, executive and legislative branch practice and guidance, state judicial ethics authorities, and from scholars, scholarly treatises, and articles.” In addition, the commentary states that to assist with Code compliance you have “directed Court officers to undertake an examination of best practices, drawing in part on the experience of other federal

and state courts.” More confusion with knowing the source for guidance comes from the statement that “The Office of Legal Counsel will maintain specific guidance tailored to recurring ethics and financial disclosure issues.” Although you seem to acknowledge the need for consistent guidance, you conspicuously stop short of formalizing the controlling source of ethics compliance guidance, exposing an Achilles heel for the new Code.

**Second**, the Court must develop an internal ethics office empowered to investigate possible violations. The lack of any enforcement body or process disincentivizes compliance and will allow violations to go unchecked. Without enforcement, there can be no accountability.

These are the bare minimum steps needed to ensure this Code lives up to the reasonable standards the public has for the ethical conduct of the Court. Allegations of ethical misconduct have only increased over the years, with 6 Justices facing allegations since late 2022.<sup>1</sup> Lingering allegations of ethical misconduct, whether credible or not, harm individual Justices, the Court as a whole, and public confidence in the institution. Until the Court creates formal internal enforcement bodies that provide consistent ethics advice to Justices and publicly reviews allegations of misconduct while disposing of meritless claims, the Court’s new Code will produce little benefit.

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<sup>1</sup> Joshua Kaplan, Justin Elliott, and Alex Mierjeski, *Clarence Thomas and the Billionaire*, ProPublica (Apr. 6, 2023) <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow> (explaining that Justice Thomas accepted 20 years of unreported travel gifts); Justin Elliott, Joshua Kaplan, and Alex Mierjeski, *Alito Took Unreported Luxury Trip With GOP Donor Paul Singer*, ProPublica (Jun. 20, 2023) <https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court> (explaining that Justice Alito received unreported travel gifts); Brian Slodysko and Eric Tucker, *Supreme Court Justice Sotomayor’s staff prodded colleges and libraries to buy her books*, AP (Jul. 11, 2023) (explaining that Justice Sotomayor’s Supreme Court staff pushed universities to purchase her books); Heidi Przybyla, *Law firm head bought Gorsuch-owned property*, Politico (April 25, 2023) <https://www.politico.com/news/2023/04/25/neil-gorsuch-colorado-property-sale-00093579> (explaining that Justice Gorsuch sold real estate to the head of a law firm with business before the court); Mattathias Schwartz, *Jane Roberts, who is married to Chief Justice John Roberts, made \$10.3 million in commissions from elite law firms, whistleblower documents show*, Business Insider (Apr. 28, 2023) <https://www.businessinsider.com/jane-roberts-chief-justice-wife-10-million-commissions-2023-4> (explaining that the Chief Justice’s wife made millions recruiting for law firms with business before the Court); Amy Howe, *Jackson’s financial disclosure reveals additional income in previous years*, SCOTUSblog (Sep. 15, 2022) <https://www.scotusblog.com/2022/09/jacksons-financial-disclosure-reveals-additional-income-in-previous-years/> (explaining that Justice Jackson reported additional income she had failed to report as a lower court judge).

The steps provided here are reasonable and logical. The status quo of questionable ethics practices will continue chipping away at the Court's reputation, until **enforceable** ethics rules are put into place. We ask that you amend this code and take further steps in the direction of change.

Sincerely,

Campaign Legal Center  
Accountable.US  
Action Together NEPA  
American Constitution Society  
Citizens for Responsibility and Ethics in Washington (CREW)  
Clean Elections Texas  
Common Cause  
End Citizens United//Let America Vote Action Fund  
Fix Democracy First  
Freedom From Religion Foundation  
Get Money Out -- Maryland  
Lawyers Defending American Democracy  
MoveOn  
NETWORK Lobby for Catholic Social Justice  
Norman Ornstein  
People For the American Way  
People Power United  
Project On Government Oversight  
Public Citizen  
Reclaim Democracy!  
RepresentUs  
The Digital Democracy Project  
The Workers Circle  
Transparency International U.S.  
Tulipshare, Sustainable Investment Fund